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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)  
AB-209U (05-00923-02)

First named inventor: Todd K. Whitehurst

Application No.: 10/057,144

Art Unit: 3763

Filed: 01/24/2002

Examiner: Lucchesi, Nicolas B.

Title: Microminiature Infusion Pump

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**OFFICE OF PETITIONS**

Attention: Office of Petitions  
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P.O. Box 1450  
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NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

**1. Petition fee**

- ☐ Small entity-fee \$ \_\_\_\_\_ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.
- ☒ Other than small entity - fee \$ 1,540. (37 CFR 1.17(m))

**2. Reply and/or fee**

A. The reply and/or fee to the above-noted Office action in the form of Supplemental Amendment Under 37 CFR 1.116 (identify type of reply):

- ☒ has been filed previously on 08/26/2004
- ☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ \_\_\_\_\_

- ☐ has been paid previously on \_\_\_\_\_
- ☐ is enclosed herewith.

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

B. R. Gold  
Signature

06/02/2008  
Date

Bryant R Gold  
Typed or printed name

29,715  
Registration Number, if applicable

Advanced Bionics  
Address

661-362-1771  
Telephone Number

12740 San Fernando Rd., Sylmar, CA  
Address

Enclosures: ☒ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay

☐ Other: \_\_\_\_\_

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**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

☒ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

06/02/2008  
Date

B. R. Gold  
Signature  
Bryant R Gold  
Typed or printed name of person signing certificate

# **Statement Establishing Unintentional Delay**

**Statement – 4 pages + cover**

**Exhibit A – 2 pages + cover**

**Exhibit B – 1 page + cover**

**Exhibit C – 1 page + cover**

**In the United States Patent and Trademark Office**

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**OFFICE OF PETITIONS**

First Named Inventor:	Todd K. Whitehurst		
Application No.	10/057,144	Art Unit:	3763
Filed:	01/24/2002	Examiner:	Lucchesi, Nicolas D
Title:	Microminiature Infusion Pump		

**Statement of Bryant R. Gold Corroborating Unintentional Delay**

I, Bryant R. Gold, being duly warned that willful false statements and the like are punishable by fine or imprisonment, or both ( 18 U.S.C. 1001), and may jeopardize the validity of this application or any patent issuing thereon, hereby declare as follows:

1. All statements made herein by own knowledge are true and all statements made on information and belief are believed to be true.

2. I am employed by Advanced Bionics, LLC, owner of the subject application.

3. This Statement is being made in support of a Petition for Revival of the subject application, submitted concurrently herewith. This Statement, and all of its attachments, are deemed incorporated by reference into the Petition for Revival.

4. I am Vice President & Chief Intellectual Property Counsel for Advanced Bionics, LLC. I have been employed in this position by Advanced Bionics, or its predecessor(s), for the last 10 years.

5. The events described herein that occurred at Advanced Bionics occurred under by direct supervision.

6. For all times referenced herein, the entire delay in filing the required replay from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. It was never the intent of Advanced Bionics that the subject application go abandoned. Until the Notice of Abandonment was actually received on 5/28/2008, it was our expectation at all times that the Patent and Trademark Office (PTO) would send a Notice of Allowance because, as established by the events set forth below, that was what all of our communications with the PTO led us to believe.

7. Events corroborating unintentional delay include the following:

a. As indicated by the file history of the subject application maintained by the PTO, the subject application was filed on 01/24/2002, was accorded Serial Number 10/057,144, and advanced to the issuance of a final rejection on 04/19/2004. A copy of the transaction history of the subject application as maintained in PAIR is attached hereto as Exhibit A.

b. In response to the final rejection, an Amendment after Final Rejection was presented to the PTO on 07-22-2004. See attached Transaction History.

c. An Advisory Action responding to the Amendment after Final was mailed by the PTO on 08/11/2004. See attached Transaction History.

d. In response to the Advisory Action, a telephone interview was held with the Examiner LoAn H. Thanh on 08/25/2004, wherein a discussion was held regarding what needed to be done to bring the application in condition for allowance. It was resolved that a Supplemental Amendment would be filed wherein amendments to the specification would be made, and wherein Claim 24 would be amended, which had previously been indicated as allowable if rewritten in independent form including all of

the limitations of the base claim and any intervening claims. See Supplemental Amendment filed 08/26/2004, resubmitted herewith as part of the Petition For Revival.

e. The Supplemental Amendment included a request for a two month extension of time. See Amendment Transmittal Letter that was a cover sheet to the Supplemental Amendment.

f. The Supplemental Amendment, including its accompanying Amendment Transmittal Letter were clearly received by the PTO, as evidenced by:

- (i) the entry of the Workflow incoming amendment on 08/26/2004, in the PAIR Transaction History (see Exhibit A);
- (ii) the entry of the granted Extensions of Time entered in the PAIR Transaction History (see Exhibit A);
- (iii) the Auto-Reply Facsimile Transmission received from the PTO on 8/26/2004 at 6:24:18 PM, which indicates the Supplemental Amendment (8 pages), its transmittal letter (1 page), and the Fax Transmittal cover sheet (1 page) were received by the PTO (attached hereto as Exhibit B); and
- (iv) the transmission verification report generated by the facsimile equipment at Advanced Bionics after the facsimile transmission was complete (attached hereto as Exhibit C).

g. From 8/26/2004 through 2007, the Intellectual Property department at Advanced Bionics was extremely busy, being involved in a merger (2004), litigation (2004-2007) and a separation (2007). Nonetheless, phone calls were made to Examiner LoAn H. Thanh at various times during this time period to inquire as to the status of the subject application. In all instances, voice messages were left for the Examiner to return the call, but we never received a reply.

h. On 01/02/2008, a voice message was received from "Fee" at the

PTO, 571-270-3671, indicating a potential abandonment of the subject application. On 01/04/2008, we called and spoke with "Fee" and explained that back in 2004 we had sent in a Supplemental Amendment as requested by the Examiner during a phone interview, and that no response had ever been received, including no response to the numerous voice messages left for the Examiner. "Fee" suggested we call the Examiner again.

i. On 01/09/2008, we called Examiner LoAn H. Thanh again. We left a voice message explaining that "Fee" had asked us to call so that we could figure out what has happened to this case. No response to our voice mail was received.

j. On 5/28/2008, we received a Notice of Abandonment for the subject application, which was mailed on 05/22/2008. See PAIR Transaction History, Exhibit A.

8. As indicated from the events described above, the entire delay in filing the required reply from the due date for the required reply until the filing of this petition was unintentional. It was always our belief during this entire delay that the "ball" was in the court of the PTO to respond to the Supplemental Amendment submitted on 8/26/2004, which Supplemental Amendment should have placed the application in condition for allowance. The PTO did not respond to that Supplemental Amendment, and this application should never have gone abandoned. Rather, based on the representations made by the Examiner immediately prior to submission of the Supplemental Amendment, it should have been allowed.

June 2, 2008  
Date

  
\_\_\_\_\_  
Bryant R. Gold

# **Exhibit A**

**(PAIR Transaction History – 2 sheets )**

Ser No. 10/057,144

June 2, 2008

**Exhibit A**





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10/057,144

Microminiature infusion pump

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## Transaction History

Date	Transaction Description
05-22-2008	Mail Abandonment for Failure to Respond to Office Action
05-12-2008	Abandonment for Failure to Respond to Office Action
08-26-2004	Request for Extension of Time - Granted
08-26-2004	Request for Extension of Time - Granted
11-08-2007	Case Docketed to Examiner in GAU
08-26-2004	Workflow incoming amendment IFW
08-11-2004	Mail Advisory Action (PTOL - 303)
08-09-2004	Advisory Action (PTOL-303)
08-05-2004	IFW TSS Processing by Tech Center Complete
05-27-2003	Reference capture on IDS
04-04-2003	Reference capture on IDS
08-05-2004	Date Forwarded to Examiner
07-22-2004	Amendment after Final Rejection
07-22-2004	Workflow incoming amendment IFW
04-22-2004	Mail Final Rejection (PTOL - 326)
04-19-2004	Final Rejection
02-06-2004	Date Forwarded to Examiner
01-26-2004	Response after Non-Final Action
01-19-2004	Rescind Nonpublication Request for Pre Grant Publication
10-23-2003	Mail Non-Final Rejection
10-20-2003	Non-Final Rejection
10-03-2003	Date Forwarded to Examiner
09-30-2003	Response to Election / Restriction Filed
09-24-2003	Mail Notice of Informal or Non-Responsive Amendment
07-15-2003	Date Forwarded to Examiner
07-07-2003	Informal or Non-Responsive Amendment after Examiner
07-07-2003	Response to Election / Restriction Filed
06-13-2003	Mail Restriction Requirement
06-12-2003	Requirement for Restriction / Election
05-27-2003	Information Disclosure Statement (IDS) Filed
05-27-2003	Information Disclosure Statement (IDS) Filed
04-04-2003	Information Disclosure Statement (IDS) Filed

04-04-2003	Information Disclosure Statement (IDS) Filed
08-15-2002	Case Docketed to Examiner in GAU
03-04-2002	Application Dispatched from OIPE
02-25-2002	Application Is Now Complete
02-07-2002	IFW Scan & PACR Auto Security Review
01-24-2002	Initial Exam Team nn

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*If you need help:*

- *Call the Patent Electronic Business Center at (866) 217-9197 (toll free) for questions about Patent Application Information Retrieval (PAIR).*
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# **Exhibit B**

**(Auto-Reply Facsimile Transmission – 1 sheet )**

Ser No. 10/057,144

June 2, 2008

**Exhibit B**

## Auto-Reply Facsimile Transmission



TO: Fax Sender at 6613621507

Fax Information

Date Received:

Total Pages:

8/26/2004 6:24:18 PM [Eastern Daylight Time]  
10 (including cover page)

**ADVISORY:** This is an automatically generated return receipt confirmation of the facsimile transmission received by the Office. Please check to make sure that the number of pages listed as received in Total Pages above matches what was intended to be sent. Applicants are advised to retain this receipt in the unlikely event that proof of this facsimile transmission is necessary. Applicants are also advised to use the certificate of facsimile transmission procedures set forth in 37 CFR 1.8(a) and (b), 37 CFR 1.6(f). Trademark Applicants, also see the Trademark Manual of Examining Procedure (TMEP) section 306 et seq.

Received  
Cover  
Page


=====>

08/26/2004 15:26 6613621507

ADVANCED BIONICS

PAGE 01/18

### AMENDMENT AFTER FINAL EXPEDITED HANDLING REQUESTED

 25129 Rye Canyon Rd. Valencia, CA 91355	<b>FAX TRANSMITTAL</b>	<b>Certificate of Transmission</b>
	To: US Patent & Trademark Office Examiner LoAn H. Thanh, Art Unit 3763, phone (703) 305-0038 Fax: (703) 872-9306 From: Laura Haburay Bishop phone (661) 362-1906 fax (661) 362-1507 Date: August 26, 2004 Pages: Ten (10), Including Cover Page Re: Supplemental Amendment Under 37 CFR 1.116 for S/N 10/057,144, filed January 24, 2002; Attorney Docket No.: AB-209U	I hereby certify this correspondence, including the papers filed, is being facsimile transmitted to the U.S. Patent and Trademark Office, Fax. No. (703) 872-9306 on this date: <u>August 26, 2004</u> Typed Name: <u>Karen M. Murray</u> Signature: <u>[Signature]</u> Date: <u>2004 Aug 26</u>

#### MESSAGE:

Please find attached:

- Amendment Transmittal Letter, including authorization to charge \$410 to Deposit Account (1 page); and
- Supplemental Amendment Under 37 CFR 1.116, responding to a Final Office Action mailed April 22, 2004, for Application Serial Number 10/057,144 (8 pages).

Thank you.

☒ Please Acknowledge Receipt of This Communication.

#### CONFIDENTIALITY NOTICE

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# **Exhibit C**

**(Transmission Verification Report – 1 sheet )**

Ser No. 10/057,144

June 2, 2008

**Exhibit C**

TRANSMISSION VERIFICATION REPORT

TIME : 08/26/2004 15:29  
 NAME : ADVANCED BIONICS  
 FAX : 6613621507  
 TEL : 6613621400  
 SER. # : BROL3J942236

DATE, TIME  
 FAX NO. /NAME  
 DURATION  
 PAGE(S)  
 RESULT  
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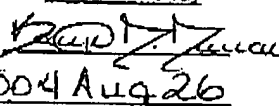
08/26 15:26  
 917038729306  
 00:02:34  
 10  
 OK  
 STANDARD  
 ECM

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**AMENDMENT AFTER FINAL  
 EXPEDITED HANDLING REQUESTED**

 <p>ADVANCED BIONICS</p> <p>25129 Rye Canyon Rd. Valencia, CA 91355</p>	<p><b>FAX TRANSMITTAL</b></p> <p>To: US Patent &amp; Trademark Office              Examiner LoAn H. Thanh, Art Unit 3763,              phone (703) 305-0038</p> <p>Fax: (703) 872-9306</p> <p>From: Laura Haburay Bishop              phone (661) 362-1906              fax (661) 362-1507</p> <p>Date: August 26, 2004</p> <p>Pages: Ten (10), Including Cover Page</p> <p>Re: Supplemental Amendment              Under 37 CFR 1.116 for S/N 10/057,144,              filed January 24, 2002;              Attorney Docket No.: AB-209U</p>	<p><b>Certificate of              Transmission</b></p> <p>I hereby certify this correspondence,              including the papers listed, is being              facsimile transmitted to the              U.S. Patent and Trademark Office,              Fax, No. (703) 872-9306</p> <p>on this date: <u>August 26, 2004</u></p> <p>Typed Name: <u>Karyn M. Murray</u></p> <p>Signature: </p> <p>Date: <u>2004 Aug 26</u></p>
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MESSAGE:

Please find attached:

- Amendment Transmittal Letter, including authorization to charge \$410 to Deposit Account (1 page); and
- Supplemental Amendment Under 37 CFR 1.116, responding to a Final Office Action mailed April 22, 2004, for Application Serial Number 10/057,144 (8 pages).